



Case Western Reserve Law Review

Volume 47 | Issue 4

1997

Introduction

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Recommended Citation

Michael J. Gerhardt, *Introduction*, 47 Case W. Res. L. Rev. 1213 (1997)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol47/iss4/4>

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SYMPOSIUM:
PRESIDENTIAL POWER IN THE
TWENTY-FIRST CENTURY

INTRODUCTION

Michael J. Gerhardt[†]

I must begin with a confession. I first began to think about doing a symposium on presidential power about a year ago to the day when I was just a law professor at The College of William & Mary in Williamsburg, Virginia. Williamsburg was a fitting place to do such thinking, because it is the birthplace of so many of America's most important political institutions and ideals. The timing was also fortuitous, because at about the same time I was offered the deanship of this Law School. Today's event marks the realization of a personal dream. I suppose it also says something about the nature of executive power.

The timing of our exploration of presidential power in the twenty-first century could not be better. We have just inaugurated the last president who will be able to serve out his full term of office in the twentieth century. The next person to be elected President will be, upon his inauguration, the first President in the next

[†] Dean and Professor of Law, Case Western Reserve University School of Law. This Introduction is taken from the remarks made by the author at the opening of this Symposium, Presidential Power in the Twenty-First Century, Case Western Reserve University School of Law, April 4-5, 1997.

century. We are also—blessedly—not in the thick of a presidential election, so if there were ever a time for us to think about presidential power in the twenty-first century, with little risk of distraction from a raging presidential campaign, it is now.

The timing of our discussion is also propitious because we have assembled some of the nation's leading governmental and legal scholars on the American presidency. Some, such as our keynote speaker and featured speaker at tonight's dinner, have been studying, exploding myths about, and expanding our understanding of the presidency and executive power for decades. More than a few have had the special privilege of closely studying and deriving insights about the presidency not just from the vantage point of the academy but from up close and personal service with a Chief Executive or two.

I do not wish to steal the thunder of these special scholars. They will talk, each in his or her own special way, each from his or her own special perspective, about the reasons for and forces contributing to the evolution of presidential power. My purpose is merely to set the stage for their discussion. For present purposes, suffice it to say that it is not possible to discuss the future of presidential power without getting a handle on the path the presidency has followed to reach its present and evolving state. Past is prologue, even with respect to the presidency. But, reconstructing the relevant past is no simple task. It is safe to say, I think, that the American presidency is not the same as it was when first drafted and ratified by the Framers of the Constitution and first occupied by George Washington. Presidential power has twisted and turned, grown and diminished and grown again, and evolved and sometimes devolved because of the convergence of various historical, economic, political, and social developments, including the rise—and, some would say, the fall—of the two party system and the increases in the size and responsibility of the national government. Presidential power has also evolved in response to the changing needs of the American people, the changing status of the states in our constitutional system, and the changes in other branches, including both the Congress and the federal judiciary.

But there is far more to the story, for what explains the differences between George Washington and Franklin Pierce; or between Millard Fillmore and Abraham Lincoln; or between Andrew Jackson and George Bush; or among Calvin Coolidge, Woodrow Wilson, Franklin Delano Roosevelt, Harry Truman, Ronald Reagan, and Bill Clinton? The institution of the presidency itself has

changed, and we have to consider the extent to which the individuals who have occupied the office have contributed to its evolution. In April, 1864, deeply mired in the Civil War, President Abraham Lincoln despondently declared, "I claim not to have controlled events, but confess plainly that events have controlled me."¹ While it is entirely possible that President Lincoln fully believed this sentiment, he was no passive patsy. He saw himself as an active agent and force for change, perhaps just one whose fate—although not fully known to himself—was preordained. He energetically exercised a wide variety of constitutional prerogatives to preserve the union, and he "shatter[d] existing power arrangements" by ending slavery.² He also helped to lay the foundations for a new constitutional order in which the President towered even above the Congress in dealing with national emergencies, liberty was understood as the fundamental guarantee of the Constitution, and the source of national power derived from the people rather than from the states.

Every person who becomes President tries to leave his stamp on the office. Every person who becomes President discovers, as did Lincoln, the tension between his own efforts to exercise, define, and influence the powers of his office and the competing efforts to do the same by outside forces, such as political parties, members of Congress, states, interest groups, factions inside and outside of administrations, the media, and the American people.

Every speaker in the symposium will be examining this tension from a different vantage point and with a different subject matter in mind. Every speaker will consider to some extent the relevance of both the original understanding and conceptions of presidential power and subsequent historic practices by the nation's chief executives. As a group, they will be engaged in a dialogue about the reasons and prospects for evolving presidential power and responsibility in most of the areas dominating contemporary news and the public interest, including the budget, war powers and foreign affairs, controversial judicial and nonjudicial appointments, removals of troublesome figures, campaign finance reform, and political scandal.

Your programs tell you more about our distinguished speakers and contributors. We would not be here today without them. But

1. DAVID HERBERT DONALD, *LINCOLN* 514 (1995).

2. STEPHEN SKOWRONEK, *THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO GEORGE BUSH* 208 (1993).

we also would not be here today without the hard work and good will of many other special people and institutions. In being a major sponsor of this Symposium, the *Plain Dealer* has helped not only to publicize the event but also to express its support for the Law School's efforts to remain a positive force within our shared community. The *Case Western Reserve Law Review* is another major sponsor of the symposium, and Jim Dixon, Christie Smith, and Abby Levine are just three of its many distinguished leaders and members who worked to coordinate every aspect of this Symposium. Professor Jonathan Entin of the Law School has labored tirelessly to keep things on track; and Ron Kahn, a respected politics professor from Oberlin College and Research Scholar at the Law School, has contributed mightily not just as an intellectual guide in charting the course of this Symposium but also in helping to choose a first-rate keynote speaker.

Which brings me to my final, pleasant task here today, the introduction of our keynote speaker. There is no one more distinguished nor better qualified to begin our discussions than Theodore J. Lowi, who has been the John L. Senior Professor of American Institutions at Cornell University since 1972. He received his doctorate at Yale in 1961 and served on the Cornell faculty from 1959 to 1965 and on the political science faculty at the University of Chicago between 1965 and 1972.

Professor Lowi has contributed to the study of politics in a variety of areas, including political theory, public policy analysis, and American political institutions. A survey of members of the American Political Science Association listed him as the political scientist who made the most significant contribution during the 1970s. He has written or edited a dozen books, including *The Pursuit of Justice* (with Robert F. Kennedy, 1964) and the highly influential *The End of Liberalism* (2nd ed., 1979).

His 1985 book, *The Personal President—Power Invested, Promise Unfulfilled*, won the 1986 Neustadt prize for the best book published on the presidency. He is co-author of one of the leading American government texts, *American Government—Freedom and Power* (1990, 1996). His most recent books are *The End of the Republican Era* (1995) and (as co-author) *We the People* (1997).

He has been the recipient of a number of awards, fellowships, and honors. He was elected to membership in the American Academy of Arts and Sciences in 1972 and has received honorary degrees from Oakland University and from SUNY/Stony Brook. In

1981-82 he was appointed to the French-American Foundation's Chair of American Civilization in Paris, and in 1991 the Fondation Nationale des Sciences Politiques of the University of Paris conferred on him the *Doctorat honoris causa*. Professor Lowi has served as President of the Policy Studies organizations, and as First Vice-President of the International Political Science Association. He was elected Vice-President of the American Political Science Association in 1985-86 and President in 1990 and is currently First Vice President of the International Political Science Association (1994-97).

